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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/064,234

06/24/2002

Edward K. Krause

201-1024

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12/03/2004

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EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/064,234	Applicant(s) KRAUSE ET AL.	
	Examiner Joseph L. Perrin, Ph.D.	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 9-10 drawn to an invention nonelected with traverse in Paper filed 30 June 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Response to Arguments

2. In view of applicant's amendment filed 05 November 2004, the status of the application is as follows:

35 U.S.C. §102(e) Rejections over Müller

The rejection of claims 1-8 are maintained for reasons set forth below. Re independent claims 1 & 6, applicant argues that the Müller reference discloses making batches of washer fluid stored for future use whereas the claimed invention is directed to consuming the washer fluid upon mixing. This is not persuasive because applicant is arguing intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In the instant case, the position is taken that the apparatus of Müller is capable of

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immediately using or storing the washer fluid. Thus, the apparatus of Müller reads on applicant's claimed invention.

Claim Objections

3. Applicant is advised that should claim 3 be found allowable, claim 4 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

4. It is noted that claim 4 appears to be an inadvertent, erroneous duplicate of claim 3, and not the original claim 4, which is directed to a heater. However, in the interest of compact prosecution, the claims have been examined as submitted which include maintaining the original rejection of claim 3 (and duplicate claim 4) and the subject matter of original claim 4 (directed to a heater) which is also found in independent claim 6.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,266,842 to Müller. Re claims 1 & 6, Müller discloses a windshield washer system including a first reservoir with a freezable fluid (container 22 containing

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water, see col. 2, lines 31-32 & 40-41), a second reservoir with a freeze resistant fluid (metering device M containing an alcohol mixture, see col. 3, lines 32-35), a mixer (reservoir R) for combining the reservoir fluids via a controller (control circuit) which automatically determines the mixing proportions based on sensed values (see col. 3, lines 20-35, which automatically electronically mixes the fluids from container 22 and device M based on temperature changes), and a heater (heat exchanger 8) operatively connected to a spray nozzle to heat the cleaning fluid "as close as possible to the spray nozzle N" (see col. 3, lines 58-61). Re claims 2 & 5, Müller further discloses using a temperature sensor connected to the controller for detecting the aforementioned values such as cleaning liquid temperatures (see col. 4, lines 5-11). Re claims 3-4 & 7, as noted above, Müller discloses a control circuit and automatically electronically operating the apparatus. Although Müller does not expressly disclose storage memory, the position is taken that the apparatus of Müller implicitly, if not inherently, discloses a computer controller which includes computer components well known in the art to include memory for automatically and electronically controlling and operating an apparatus. Re claim 8, Müller discloses using the control circuit to determine the amount of alcohol to add to the mixer (reservoir R) (see col. 3, lines 29-35).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph L. Perrin, Ph.D.
Examiner
Art Unit 1746

jlj

A handwritten signature in black ink, appearing to read "J. L. Perrin", is written over the printed name and title.